

REMARKS

In the pending application, claims 1-9, and 11-14 are presently pending. Applicants respectfully request reconsideration of the pending claims in view of the following statements.

Claims 1, 3, 5, 8-9, 11-12, and 14 were rejected under 35 U.S.C. 103(a) based on Helland et al. (U.S. Patent No. 6,134,594) and Hardiman et al. (U.S. Patent No. 5,504,672).

For a rejection under 35 U.S.C. 103(a) to be proper, there must be some teaching, motivation, or suggestion in the prior art to select and combine the references relied on as evidence of obviousness. *In re Lee*, 277 F.3d 1338 (Fed Cir. 2002). See also Section 2142 of the MPEP. Further, the combination of references must teach all of the limitations of the claims.

Applicants submit that the rejection of claims 1, 3, 5, 8-9, 11-12, and 14 is improper under 35 U.S.C. 103(a) based on Helland et al. (U.S. Patent No. 6,134,594) and Hardiman et al. (U.S. Patent No. 5,504,672) because (i) no proper motivation has been identified for the proposed combination, and (ii) the proposed combination fails to teach all of the recited claim limitations.

Referring to Helland et al., the reference is directed to a server application architecture for managing concurrent access by multiple users to a server application. The secondary reference Hardiman et al. is directed to an industrial process controller for controlling a process variable response to a setpoint. In other words, the only similarity between the systems of Helland et al. and Hardiman et al. is that both systems use software. Applicants submit that no proper motivation has been identified in Helland et al. for combining the teachings of Hardiman et al. with Helland et al. Instead, the rejection relies on the unsupported statement that the modification would be obvious because one of the ordinary skill in the art would be

motivated to implement a method for any industrial application. Applicants submit that such unsupported reasoning cannot be proper. Rather, reasoning of this sort would render obvious every invention that utilizes software related to an industrial application. Further, such reasoning sanctions an approach that simply uses applicants' claims and teachings as a roadmap to select and combine the prior art. The Federal Circuit has frequently counseled against such an approach. in *In re Fritch*, 972 F.2d 1260, 1266 (Fed. Circ. 1992), noted:

"It is impermissible to use the claimed invention as an instruction manual or "template" to piece together the teachings of the prior art so that the claimed invention is rendered obvious... This court has previously stated that "[o]ne cannot use hindsight reconstruction to pick and choose among isolated disclosures in the prior art to deprecate the claimed invention."

Since the Rejection does not provide any supported reason for selecting Hardiman et al. to be combined with Helland et al., the only conclusion available is that Hardiman et al. was selected solely by using applicants' claims as a 'blue print'. As such, applicants respectfully submit that the rejection should be withdrawn.

Referring now to claim 1, the claim recites among other limitations the following limitations:

"an inventory of software components resident in the memory store wherein a plurality of tiers are generated from the inventory of software components using the N-tier software, each tier being associated with at least one other tier, and each tier comprising a plurality of software components and performing a predetermined function relating to an asset, each software component comprising a software object"

Referring to Helland et al., the reference discloses a server architecture having a client tier, a server application tier, and a database tier. See Figure 2 of Helland et al. However, Helland et al. does not provide any teaching that each of the three tiers comprises a plurality of software objects, as recited in claim 1. Further, Helland et al.

does not provide any teaching that each tier performs a predetermined function relating to an asset, as recited in claim 1. The Examiner agrees with this point. See Office Action, page 3, lines 18-19.

Referring to Hardiman, the reference discloses an industrial controller for controlling a process variable responsive to a setpoint. Hardiman, however, does not provide any teaching of software tiers comprising a plurality of software objects, as recited in claim 1. Further, Hardiman does not provide any teaching that each tier performs a predetermined function relating to an asset, as recited in claim 1.

Accordingly, because the combination of Helland et al. and Hardiman et al. does not teach all of the limitations of claim 1, applicants submit that claim 1 and claim 3 that depends from claim 1, are allowable.

Referring now to claim 5, the claim is directed to a method for developing a software application to manipulate data associated with a selected set of assets.

Claim 5, recites:

- "selecting a first software component from an inventory of software components to perform a first function relating to a selected set of assets;

- selecting a second software component from outside the inventory of software components to perform a second function;

- defining a plurality of tiers generated from at least the inventory of software components, each tier being associated with at least one other tier, each tier comprising a plurality of the software components and performing a predetermined function, each software component comprising a software object, the first software component being assigned to a first tier and the second software component being assigned to either the first tier or a second tier;

- defining the sequencing of the first and second the software components in order to manipulate data associated with the selected set of

assets."

Independent claim 11 is directed to an article of manufacture having similar limitations as independent claim 5.

Referring to Helland et al., the reference discloses a server architecture having a client tier, a server application tier, and a database tier. See Figure 2 of Helland et al. However, Helland et al. does not provide any teaching of selecting a first software component from an inventory of software components to perform a first function relating to a selected set of assets, as recited in claims 5 and 11. Further, Helland et al. does not provide any teaching of selecting a second software component from outside the inventory of software components to perform a second function, as recited in claim 5. Further, Helland does not teach defining a plurality of tiers where each tier comprises a plurality of software objects, as recited in claims 5 and 11. Further, Helland et al. does not teach defining the sequencing of the first and second the software components in order to manipulate data associated with the selected set of assets, as recited in claims 5 and 11.

Referring to Hardiman et al., the reference the reference discloses an industrial controller for controlling a process variable responsive to a setpoint. Hardiman, however, does not provide any teaching of selecting a first software component from an inventory of software components to perform a first function relating to a selected set of assets, as recited in claims 5 and 11. Further, Hardiman et al. does not provide any teaching of selecting a second software component from outside the inventory of software components to perform a second function, as recited in claim 5. Further, Hardiman et al. does not teach defining a plurality of tiers where each tier comprises a plurality of software objects, as recited in claims 5 and 11. Further, Hardiman et al. does not teach defining the sequencing of the first and second the software components in order to manipulate data associated with the selected set of assets, as recited in claims 5 and 11.

Accordingly, because the combination of Helland et al. and Hardiman et al. does not teach all of the limitations of claims 5 and 11, applicants submit that claims

5 and 11, and claims 8, 9, 13 that depend from at least one of claims 5 and 11, are allowable.

Claims 2, 4, 6-7, and 13 were rejected under 35 U.S.C. 103(a) based on Helland et al. and Hardiman et al. and official notice. As discussed above, neither Helland et al. and Hardiman et al. provide any teaching that each of a plurality tiers comprises a plurality of software objects, as recited in independent claim 1. Further, Helland et al. does not provide any teaching that each tier performs a predetermined function relating to an asset, as recited in claim 1. Because claims 2 and 4 depend from claim 1, applicants submit that the references do not teach all of the limitations of claims 2 and 4.

As discussed above, neither Helland et al. nor Hardiman et al. provide any teaching of selecting a first software component from an inventory of software components to perform a first function relating to a selected set of assets, as recited in claims 5 and 11. Further, neither reference provides any teaching of selecting a second software component from outside the inventory of software components to perform a second function, as recited in claims 5 and 11. Further, neither reference teaches defining a plurality of tiers where each tier comprises a plurality of software objects, as recited in claims 5 and 11. Further, neither references provides any teaching of defining the sequencing of the first and second the software components in order to manipulate data associated with the selected set of assets, as recited in claims 5 and 11. Accordingly, because claims 6-7, and 13 depend from one of independent claims 5 and 11, applicants submit that the references do not teach all of the limitations of claims 6-7, and 13.

Accordingly, because the combination of Helland et al. and Hardiman et al. does not teach all of the limitations of claims 2, 4, 6-7, and 13, applicants submit that 2, 4, 6-7, and 13 are allowable.

If for any reason the Examiner feels that consultation with applicants' attorney would be helpful in the advancement of the prosecution, the Examiner is invited to call applicants' attorney at the telephone number listed below.

If there are any charges due with respect to this Amendment or otherwise, please charge them to Deposit Account No. 06-1130.

Respectfully submitted,

A handwritten signature in cursive script, reading "John Buckert", is written over a horizontal line.

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Date: September 9, 2004
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